DOCUMENT RESUME

ED 270 892 EA 018 582

AUTHOR Shaughnessy, M. Angela
TITLE Teacher Supervision, Evaluation and Contract Renewal: Legal and Pastoral Concerns.
PUB DATE 3 Apr 86
NOTE 19p.; Paper presented at the Annual Meeting of the National Catholic Educational Association (Anaheim, CA, March 31-April 3, 1986).
PUB TYPE Speeches/Conference Papers (150) -- Viewpoints (120)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Administrator Responsibility; *Catholic Schools; Contracts; Elementary Secondary Education; Faculty Handbooks; Legal Responsibility; Parochial Schools; Personnel Management; Principals; Private Schools; School Law; Teacher Administrator Relationship; *Teacher Dismissal; *Teacher Evaluation; Teacher Responsibility; *Teacher Rights; *Teacher Supervision
IDENTIFIERS *Contract Law

ABSTRACT

Except in matters of obvious race and/or sex discrimination, teachers in Catholic and other private schools have fewer Constitutional rights than public school teachers have. Contract law, rather than Constitutional law, governs most teacher employment situations in Catholic schools. An awareness of its implications, together with pastoral (moral and ethical) considerations, is important for the protection of teachers and principals alike in matters concerning teacher supervision, evaluation, and contract renewal. Legal disputes can largely be avoided, however, if teachers and principals can understand the purposes and functions of supervision and evaluation, and if they can choose appropriate pastoral actions. Supervision, a formative experience in which teachers are observed in the classroom, is different from evaluation, which is basically summative. Schools should provide teachers with a faculty handbook that states school expectations, the nature of supervision and evaluation, general reasons for which a teacher may be terminated, and the procedures for non-renewal of contract (a term often confused with dismissal). Principals must maintain open communication with teachers, allowing for teachers' responses to evaluation, and must keep accurate and impartial records. Teachers may follow ten recommendations (listed in Appendix 2) for success both in the classroom and with administrators. (IW)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED270892

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

M. A. Shaughnessy

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

TEACHER SUPERVISION, EVALUATION AND CONTRACT RENEWAL:

LEGAL AND PASTORAL CONCERNS

Sister M. Angela Shaughnessy

Sister M. Angela Shaughnessy, SCN, Ph.D.
Wakefield, MA

Presentation to NCEA Convention
Anaheim, California
Thursday, April 3, 1986
9:00-10:15 a.m.

EA 018 582

TEACHER SUPERVISION, EVALUATION AND CONTRACT RENEWAL

It is a very real privilege for me to be with you today to discuss the topics of teacher supervision, evaluation and contract renewal. I stand with you as a fellow Catholic educator and administrator, as one who is involved in the day to day struggle to meet the challenges of Catholic education, of "teaching as Jesus did".

The responsbility of educating the students entrusted to us is an awesome one. All of us would agree, I think, that teachers are the persons who have the greatest impact on students. It is the responsibility of administrators to insure that qualified personnel be employed in our schools. Principals must make decisions about teacher performance. Teachers who do not leave voluntarily when they are found professionally deficient should not have their contracts renewed. However, teachers who are competent and committed should find evaluation and supervision procedures to be protections for them.

The responsibility of administrators in these matters cannot be overstated. It is no easy responsibility. Often administrators find themselves struggling with the pastoral and legal dimensions of situations. No one wants to "fire" a teacher whose family's livelihood depends on his/her income and yet justice demands that students be provided with competent teachers.

My purpose today will be to provide working definitions of supervision, evaluation and contract renewal. I will discuss

the sources of the law affecting us as Catholic educators as well as the duties of principals and teachers.. I will also discuss some practical ways in which administrators can help their teachers and themselves make supervision and evaluation a mutually beneficial experience.

I would like to make this presentation using a pre-test as a framework. This pre-test involves the areas of supervision, evaluation and contract renewal in the Catholic school. (See Appendix 1.)

The first statement, "While teaching in Catholic schools, teachers have fewer Constitutional rights than teachers in public schools have" is true. Teachers in Catholic schools, in any private or non-public school for that matter, have fewer rights than do their public school counterparts. To date, no court has found that Catholic school teachers have Constitutional freedoms that administrators are legally bound to protect. Unless state action (the presence of the state government within a contested activity) can be demonstrated, non-public school teachers are not able to claim protections under the Constitution. The only exception to this principle lies in the area of discrimination.

If, for example, it could be proven that teachers of a particular race were evaluated according to different standards than those used to evaluate all other teachers in a given Catholic school, then Constitutional protection could be invoked because the state or federal government is said to have a compelling interest in promoting racial harmony.

The same situation exists in regard to sex discrimination. A

1980 case illustrates. An unmarried pregnant teacher's contract was not renewed. She was able to show that unmarried male teachers who had been involved in premarital sex had been retained on the faculty even though the administrator knew of their violation of the commandment prohibiting premarital sex. In this case, the judge determined that the teacher had been discriminated against because the non-renewal of her contract was based on sex rather than on a job-related deficiency. The law talks about "bona fide occupational qualifications" and the judge in this case did not feel that unmarried pregnancy made the teacher unable to meet the bona fide occupational qualifications of the teaching position. The judge further noted that, if the male teachers involved in premarital or extra-marital sex had been dismissed, then the female teacher could have been dismissed as well. Separation of church and state is guaranteed under the first amendment and the school would have been upheld if it had been maintaining a religious principle. Once the religious principle was applied unfairly on the basis of sex, the government intervened and determined that the school had discriminated against the teacher. See Dolter v. Wahlert, 483 F. Supp. 266 (N.D. Iowa 1980.)

The second statement, "Contract law governs most teacher employment situations in Catholic schools" is true. There are four types of law that can affect us in education. Constitutional law applies in discrimination cases; statutes and the common law can apply to us in Catholic schools. But the main source of the law governing us in Catholic schools is contract law. The contract is not simply the form bearing the heading, "Teacher Contract". A court will consider the faculty handbook to be part of the contract. In any dispute, a court

will look at the provisions of the contract to determine who is at fault. It is important to note, however, that reinstatement is not a remedy for breach of contract. No private emplbyer can be forced to keep an employee against the employer's wishes. The ancient doctrine of "employ at will" prevails. The remedy for breach of contract is damages. So, if a school wrongfully terminates a teacher, it may be required to pay one or more years' salary as damages. In schools in which unions are present, administrators must be careful to follow the procedures in the union contract.

Aside from the legal problems associated with losing a breach of contract case brought by a teacher, Catholic school administrators must be concerned with the pastoral aspects of the situation. For example, an administrator may be legally able to terminate the contract of a terminally ill teacher who is no longer able to perform his or her duties. The administrator may have no legal duty to pay the teacher any salary. However, Christian justice would seem to demand that some sort of arrangements be made to financially help a teacher in such a situation. Many of us have probably heard "horror" stories of Catholic school teachers who are literally left without resources when they can no longer perform their duties in the school. This is just one example of a legal/pastoral dilemma.

<u>Supervision of teachers</u> and <u>evaluation of teachers</u> are not synonymous terms. Supervision is a formative experience and evaluation is a summative one, according to theorists. Practically speaking, supervision is the

observation of teachers in classrooms or other instructional situations. The principal should be making regular visits to teachers' classrooms. In fact, a principal's duties can be summarized under two areas: (1) making, developing and communicating rules and policies and (2) supervising teachers.

Supervision can be problematic for both the principal and the teacher. A principal who never taught any grade lower than the sixth may feel inadequate in a first grade teacher's classroom; a high school principal who taught English may feel less than competent in a physics classroom. But administrators and indeed all of us who are educators should be able to recognize good teaching within five to ten minutes of entering a classroom. If supervision is an ongoing process, then both principal and teacher can grow together and help each other to improve the learning environment of the school. If supervision is seen as punitive--as something that is only engaged in if the principal is "out to get a teacher" then it will hardly be successful.

Evaluation is summative: an administrator sums up all the available data and makes a decision regarding contract renewal. Evaluation of teaching performance, then, should be based on more than supervisory data. We can summarize the duties of teachers in two categories just as we did those of principals: (1) implementing rules and (2) supervising the safety and learning of children. Therefore, a principal will gather all pertinent data in a contract renewal situation. The principal will seek to answer such questions as, "Does

this person support the rules of the school?' "Does he or she look after the safety of the children?" as well as "Is he or she a good subject matter teacher?' Evaluation then is a more encompassing concept than supervision but both should be present in a good school. The demands placed upon administrators make it too easy to defer supervision, to state that "I wish I could observe teachers' classrooms but I just don't have time" or "Mrs. Smith probably isn't doing a very good job but is a nice person and I don't have the heart to fire her. Besides, who needs the hassle anyway?"

I would submit to you that our schools and our teachers and our administrators are there for the students not the students for the teachers' employment. I can think of no more sacred responsibility than insuring that students are being taught by capable, competent, caring professionals and that all teachers are encouraged and given the means to become the best professionals they can be.

We cannot underestimate the importance of teachers knowing what is expected of them. The faculty handbook should contain a statement of what a teacher will experience in the way of supervision and evaluation. For example, who will supervise, when, how often? What besides classroom observations will form the basis for evaluation? How will the teacher be informed about his/her meeting of expectations other than those covered in routine supervisory visits?

Ultimately, it is the principal who is responsible for supervision and evaluation of teachers even if someone else, such as the pastor,

signs the contract-- because the principal is the chief executive officer of the school. Supervision and evaluation enable a principal to make wise decisions about contract renewal. It is hardly fair for a principal to decide not to renew a teacher's contract if the principal has never observed the teacher doing his or her job. Yet I know, and I suspect you do as well, at least one person who has lost a teaching position because he or she "couldn't keep order" or "was incompetent" when the person's principal had never been in the classroom. Written observations that have been shared with teachers involved make some of the best data available in making employment decisions. A principal can use the data to ask questions at the end of the year. For example, "We have discussed some of the difficulties you have had with keeping the other children on task while you are working with the reading groups. I know that you have tried thus and such a strategy and when I last visited your classroom, it seemed to be working fairly well. Have you tried any other strategies or had any other thoughts about how to better the learning environment for the students when your attention necessarily can't be on the total group?"

Supervision is also a teacher's best defense against unjust termination. Should a group of parents, a pastor, or anyone maintain that a teacher is not doing his/her job, the principal's observations can protect the teacher. If a parent were to claim that a child now in the third grade could not read and the first and/or second grade teacher is to blame, it would be pretty hard to prove the claim false if no professional had ever supervised the teacher. If, however, a principal

can say, "I visited Mrs. Smith's class four times last year and students were being taught reading concepts, they were reading, and Mrs. Smith's lesson plans contained adequate time for the teaching of reading," it will be much harder, if not impossible, for an accusation to stand up in court or in a decision not to re-hire.

What about unannounced supervisory visits? Unless a faculty handbook or a contract expressly prohibits unannounced visits, a principal has a legal right to drop in at any time whatsoever. But, here again, the most prudent action and, indeed the fairest action, may be to not do what one legally might do. I do not mean to suggest that one should never drop in on a class unannounced. All of us probably know of teachers who teach one way when the supervisor is present and another way when the supervisor leaves. But I believe that unannounced supervision should be used sparingly.

A very wise person once said, "If you tell a person when you're coming in to observe, you can be relatively certain that you are seeing that person's best teaching. You can imagine what the worst is." And I think that is generally true. Announcing visits also precludes a teacher's claiming that he or she didn't know the principal was coming, that the principal came on a review day, or a test day, or a study period.

In extreme cases, a principal may have to drop in unannounced. I believe that a principal should reserve the right to make unannounced visits but it is a right that should be exercised only on rare occasions.

The best format for a supervisory visit is one that allows for pre and post observation conferences. Indeed, many supervision experts

recommend just such a format. Time, however, can be a constraint. But a pre-conference in which the teacher and supervisor meet before the observation, discuss the teacher's lesson plans, and allow the teacher to ask the supervisor for help in observing specific areas should set the teacher at ease and allow him/her to give a good performance. A post conference will help alleviate anxiety as to "how one has done" and will provide for immediate feedback and goal-setting.

Teachers should always sign supervisory instruments so there can be no doubt that they saw and discussed the instruments. In the interest of fairness, teachers should be allowed to append any written comments they desire; in effect, they should be allowed to disagree with the supervisory or evaluative instrument. Aside from being good legal protection, such procedures model fairness to our school communities.

It is not advisable to keep supervisory and evaluative instruments a secret. In the event of any litigation surrounding termination or non-renewal of contact, a judge will look at the behavior of both parties to see if the behaviors are "fundamentally fair". Courts also talk about "reasonable persons". It does not seem fair or reasonable that a teacher would be denied access to documents pertaining to him or herself and continued employment. Certainly, sharing supervisory and evaluative instruments promote an atmosphere of healthy communication.

Teachers do have legal as well as moral rights to see whatever is in their personnel files. Therefore, it is important that administrators

exercise caution over the contents of such files. Files should contain: (a) the teacher's transcript(s) of academic work (b) recommendations for employment (c) records of observations and evaluations (d) any teacher self-evaluations and (e) disciplinary warnings or records. If there is no reason to have something in a file, don't put it in the file. For example, an administrator's personal notes regarding a conference or an observation do not belong in a teacher's file and their presence could certainly prove problematic.

Although teachers have a right to see what is in their personnel files, administrators have a right to keep private logs on any and all teachers (a private log would be defined as one that is never shown to a teacher). These logs can be useful in recalling information to be used in evaluation conferences. However, once an administrator shows a private log to anyone, it ceases to be a private log and could possibly be subpoenaed in a court of law. The main purpose of a private log is to provide the administrator with specific instances of behavior and to serve as a kind of jog to the memory. It is much easier to talk about punctuality for example, if a principal can cite that on four different dates, a teacher was late than if a principal has a vague recollection that "you had a problem with attendance earlier in the year".

Let us turn now to the topic of non-renewal of contract. Non-renewal of contract and dismissal from employment are not synonymous terms. For example, a person may have a one year contract to work in the place of a teacher on maternity leave. His/her contract

will not be renewed; however, that non-renewal of contract does not carry the same connotation and stigma that dismissal from employment or "being fired" does.

Sometimes, as administrators, we can use the terms synonymously or we can say to a teacher we want to be rid of that "I'm not firing you' I'm choosing not to renew your contract." Indeed, the way many contracts are written across the country, all teachers in some schools may face non-renewal of contract every year because the contract will contain a clause such as, "This contract expires June 30 unless definitely renewed." In many of these situations, there is little real difference between non-renewal of contract and dismissal; if a principal wants to dismiss a teacher, he or she can simply not renew the contract for the next year. The situation is different if a school has a policy whereby a teacher can expect continuing employment after a given number of years. Even if no formal tenure policy exists, de facto tenure is said to exist if an an expectaton of continuing employment is documented.

The faculty handbook should state the reasons, at least in general terms,for which a teacher may be terminated. Some persons believe that because courts use what is called the "whole record" test that a teacher cannot be lawfully terminated for a single incident or infraction. There are, however, certain crimes so heinous that a school is justified in immediate termination of the teacher. Obvious examples would be rape and murder. The

most important factor to keep in mind in any termination or non-renewal situation is documentation. The best protection against a lawsuit is a written record of the reasons leading to termination.

It is good policy to state, in the faculty handbook or contract, the procedures for termination or non-renewal of contact. However, teachers can be terminated even if the procedures aren't a matter of policy. Having written procedures can make everyone's position clearer and can give all parties guidance in working through a termination process.

Problems can arise when procedures aren't followed or when conflicting policies exist. Many of us will remember the famous Reardon v. LeMoyne case (454 A. 2d 428 N.H. 1982) which involved four religious sisters suing the archbishop. Without going into the details of the case, I would like to point out that part of the difficulty in the case arose because the faculty handbook said one thing (faculty members could, after a certain number of years of employment, expect continuing employment until their seventieth birthdays) while the contract stated that employment was on a year to year basis. Administrators should determine that all documents are consistent.

Unless a faculty handbook or contract states otherwise, a teacher does not have to be given the reasons for non-renewal of contract. However, it seems that the pastoral action would be to give the person the reasons so that he/she could seek self-improvement. Problems can result, though, when a teacher then

attempts to prove in court that the reasons are not true or sufficient. This situation is another example of a pastoral/legal dilemma in which administrators can find themsleves.

The above comments have, I hope, indicated that what one may legally do in a supervisory, evaluative or contract renewal situation is not always the most pastoral action to take. In a way, administrators are involved in a kind of juggling act--attempting to juggle the legal dimensions of our position with the pastoral ones. I would like to share with you ten recommendations for teachers which can help teachers insure that they are performing their duties in a professional manner and meeting the school's expectations of them as teachers. (See Appendix 2.)

Finally, I would like to suggest the following:

(1) develop a planned, orderly procedure for supervision of teachers

(2) publish that procedure to teachers

(3) treat all teachers consistently

(4) put records of observations and evaluations in writing in which you:

--confine yourself to the facts

--don't speculate on motivation or attitude

--follow the rule, if you don't have to say it, don't

--write as though you were certain others will read what you have written.

Two last thoughts: Shakespeare wrote many years ago, "To thine own self be true and it must follow then, as surely as the day the night, thou cannot be false to anyone." If we strive to be true to our

best selves, I think we will be successful in meeting what is required of us as educators. Those of us who are administrators will be successful (from both a pastoral and a legal standpoint) as supervisors, evaluators and persons who make contract decisions.

When in doubt, let us ask ourselves: "What would Jesus do if He were in this situation?" I don't think we can ask any better question in our efforts to be good Catholic educators.

Appendix 1

TRUE OR FALSE SUPERVISION, EVALUATION, CONTRACT RENEWAL

_____ 1. While teaching in Catholic schools, teachers have fewer Constitutional rights than teachers in public schools have.

_____ 2. Contract law governs most teacher employment situations in Catholic schools.

_____ 3. The faculty handbook is part of the teacher's contract.

_____ 4. Supervision of teachers and evaluation of teachers are synonymous terms.

_____ 5. Supervision of teachers involves observation of teachers in classrooms or other instructional situations.

_____ 6. Evaluation of teaching performance should be based on more than data obtained from supervisory instruments or observation forms.

_____ 7. The principal is the person responsible for supervision and evaluation of teachers, even if the pastor or other person signs the contracts.

_____ 8. Principals have a legal right to make unannounced supervisory visits.

_____ 9. The best format for a supervisory visit is one that includes a pre conference and a post conference.

_____ 10. Teachers should be asked to sign supervisory instruments and should be allowed to add any written comments they desire.

Appendix 1 (con.)

____ 11. A teacher has a legal as well as a moral right to see whatever documents are contained in his/her personnel file.

____ 12. It is legally permissible for an administrator to keep a private log for each teacher.

____ 13. Non-renewal of contract and dismissal from employment are synonymous terms.

____ 14. A teacher can never be dismissed for a single incident or infraction.

____ 15. A teacher cannot be terminated if the procedures for termination are not stated in the faculty handbook or in the contract.

____ 16. Legally, a teacher must be given the reason(s) for non-renewal of contract, if he or she requests the reason(s).

____ 17. What one may legally do in a supervisory, evaluative or contract renewal situation is not always the most pastoral action to take.

Appendix 2

RECOMMENDATIONS FOR TEACHERS

1. Know what your teaching contract says. (Courts consider faculty handbooks as part of the contract.)

2. Be familiar with the rules and regulations of your school and with any particular rules that your principal makes.

3. Enforce school and administrative rules.

4. Establish rules for classroom behavior. Be sure to make those rules known to students. Be sure students understand the rules and the consequences for not following them. Be consistent in enforcing rules. (Posting classroom rules and procedures is a good idea.)

5. No matter how angry you may become, never punish a student without explaining what the student did that merits punishment and allowing the student some opportunity to explain the behavior.

6. Take every reasonable precaution to insure the safety of your students. Report any unsafe building or other conditions to the principal or other appropriate person.

7. Do not leave students unattended unless absolutely necessary. If necessary, be sure that students know what procedures they are expected to follow and/or ask another teacher to "keep an eye" on your students.

8. Don't make unnecessary negative comments about students either orally or in writing. If it is necessary to make statements about student misconduct or lack of academic ability, be sure comments are specific and relevant. (For example: Bobby was absent 10 times this marking period, late fifteen times and punished for disobedience eleven times RATHER than Bobby is sick most of the time, late the rest of the time and always in trouble. Mary Lou reads on a second grade level and has not been able to successfully solve problems involving multiplication and division RATHER than Mary Lou can't read and will probably never be able to do math. (A good rule is: If you don't have to say it, don't.)

9. If an accident occurs in your classroom, notify the principal immediately and write down the specifics of the incident as soon as you can.

10. Keep some kind of lesson plan book so that if your teaching competency is ever questioned, you will have some written record of what you did and what you intended to do.

REMEMBER: WHEN IN DOUBT, ASK YOURSELF "WHAT WOULD A REASONABLE PERSON DO IN THESE CIRCUMSTANCES?" "IF SOMEONE ELSE WERE IN THIS SITUATION, WHAT WOULD I ADVISE THEM TO DO?"